District No. 10 of the International Association of Machinists and Aerospace Workers, AFL-CIO *and* Pabst Brewing Company and Carpenters District Council of Milwaukee County and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Cases 30-CD-93-1, 30-CD-93-2, and 30-CD-93-3

August 24, 1981

DECISION AND DETERMINATION OF DISPUTES

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Pabst Brewing Company, herein called the Employer, alleging that District No. 10 of the International Association of Machinists and Aerospace Workers, AFL-CIO, herein called Machinists, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by Carpenters District Council of Milwaukee County and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein called Carpenters.

Pursuant to notice, a hearing was held before Hearing Officer Larry Brennan on March 10, 11, and 18, 1980. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, Carpenters, Machinists, and the Employer filed briefs, and the Employer filed a reply brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

Pabst Brewing Company is a Delaware corporation engaged in brewing beer at its facilities located in Milwaukee, Wisconsin. During the past calendar year, a representative period, the Employer received gross revenues in excess of $500,000 in the course and conduct of its business, and, during the same period of time, it sold and shipped goods and materials valued in excess of $50,000 directly to points located outside the State of Wisconsin. The parties stipulated that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein. Accordingly, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Machinists and Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTES

A. *The Work in Dispute*

The parties stipulated that the work in dispute is as follows:

Case 30-CD-93-1: Installation, adjustment, and maintenance of woven chain belt conveyor drives at the Employer's Milwaukee, Wisconsin, operation.

Case 30-CD-93-2: Installation, adjustment, and maintenance of palletizer conveyors (the conveyor system that is an integral part of palletizers) at the Employer's Milwaukee, Wisconsin, operation.

Case 30-CD-93-3: Installation, adjustment, and maintenance of the packer conveyance system including the compression unit at the Employer's Milwaukee, Wisconsin, operation.

B. *Background and Facts*

For at least the past 20 years, the Employer has recognized and bargained with Machinists and has entered into a series of collective-bargaining agreements with Machinists, the most recent of which is, by its terms, effective from August 5, 1978, to August 1, 1981.

Also, for at least the past 20 years, the Employer has recognized and bargained with Carpenters and has entered into a series of collective-bargaining agreements with Carpenters, the most recent of which is, by its terms, effective from October 1, 1978, to September 30, 1981.

In 1960, the Employer, Machinists, and Carpenters entered into an agreement which provided for the assignment of certain work to employees represented by Machinists and certain other work to millwrights represented by Carpenters. The Board has, on a number of occasions, considered this agreement in awarding certain disputed work to employees represented by the Unions involved

herein.[1] Item 23 of the aforementioned 1960 agreement provides, *inter alia*, that "all conveyors, except table top chain" come within the work jurisdiction of the millwrights represented by Carpenters. That agreement also grants to employees represented by Carpenters jurisdiction over "compression units" (Item 63), "Palletizer Infeed and Discharge Conveyors" (Item 65), and "Can Dump Tables-Woven Chain Belt, Gravity Can runs" (Item 70). The 1960 agreement grants to employees represented by Machinists, *inter alia*, jurisdiction over "Packers" (Item 59), "Palletizers (except Infeed and Discharge Conveyors)" (Item 64), and "Can Dump Tables-Drives and vertical shaft" (Item 71).

Case 30-CD-93-1: In 1971, the Employer installed a wire mesh bottle accumulation table (wire mesh table) to replace the existing slat bar table. Although Machinists had jurisdiction over the slat bar table, the Employer assigned the work of installing the wire mesh table to Carpenters-represented employees. On November 4, 1971, the Employer issued a jurisdictional memorandum awarding all future work on the wire mesh table and its components to employees represented by Carpenters based on Item 70 of the 1960 agreement. Thereafter, Machinists filed a grievance alleging that the Employer's November 4 award violated Item 71 of the agreement. On December 6, 1971, the Employer issued a revised memorandum in which it transferred to Machinists-represented employees jurisdiction over maintenance of belt drives. However, the parties failed to follow the December 6 memorandum, and the Employer continued its practice of assigning all work on the wire mesh table to employees represented by Carpenters.

On June 22, 1978, Machinists filed a grievance which reiterated the contentions set forth in the 1971 grievance which led to the December 6 revised memorandum. The Employer denied Machinists grievance based on past practice since November 4, 1971, without considering its December 6, 1971, revised memorandum.[2]

Case 30-CD-93-2: Since 1958, the Employer has operated automatic palletizer machinery at its Milwaukee facility. At that time, the Employer assigned to employees represented by Carpenters all work on case and pallet conveyors internal to the automatic palletizer then in use. The 1960 agreement, adopted by the parties, refined jurisdiction over this work by granting to Carpenters-represented employees jurisdiction over all conveyors, including palletizer infeed and discharge conveyors but excluding table top chain conveyors (Items 23 and 65), while awarding work on "Palletizers (except Infeed and Discharge Conveyors)" (Item 64) to Machinists-represented employees. Subsequent memoranda issued by the Employer in 1965, 1969, 1970, and 1979 reiterated the assignment of maintenance work on conveyors internal to palletizers to employees represented by Carpenters. No grievances were filed to the assignments of work made by any of these memoranda.

On June 22, 1978, Machinists filed a grievance contending that employees represented by it should be assigned all adjustment and maintenance work on the palletizers, including work on conveyors internal to the palletizers.

Case 30-CD-93-3: The Employer also operates automatic and semiautomatic beer packing equipment, which places individual cans and bottles in cases, cartons, or 6 or 12 packs. Similar to the work assignments for the palletizers described above, the Employer assigned to Carpenters-represented employees the maintenance and adjustment work on conveyors internal to the packer. In addition, the Employer assigned to employees represented by Carpenters work on the compression unit on the Mead 12-pack Packer. This packer places cans in a 12-can carrier, which is formed by gluing a cardboard container around the cans; the compression unit holds the container's flaps down until the glue sets.

C. *Contentions of the Parties*

With regard to Case 30-CD-93-1, the Employer asserts that the assignment should conform to the revised memorandum of December 6, 1971, which awards the work in dispute to Machinists-represented employees, notwithstanding the parties' failure to follow that memorandum. Carpenters disagrees with the Employer in this regard, contending that assignment of this work should accord with past practice since November 4, 1971. Machinists contends that the Board should apply the 1960 agreement without regard to past practice.

With regard to Cases 30-CD-93-2 and 30-CD-93-3, the Employer urges that the disputed work be assigned to employees represented by Carpenters, as in both instances such assignment is consistent with Item 23 of the 1960 agreement and with past practice. Carpenters agrees with and adopts the Employer's assertions in this regard. Machinists contends its members are entitled to the disputed

[1] *District No. 10 of the International Association of Machinists and Aerospace Workers, AFL-CIO (Pabst Brewing Company)*, 242 NLRB 318 (1979); *Carpenters District Council of Milwaukee County and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Pabst Brewing Company)*, 247 NLRB 1393 (1980); *Carpenters District Council of Milwaukee County and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Pabst Brewing Company)*, 255 NLRB 413 (1981).

[2] The disputed work totals between 4 and 6 hours of work per year.

work based on Item 64, which awards its members all work on "Palletizers (except Infeed and Discharge Conveyors)," and Item 59, which awards its members all work on "Packers," of the 1960 agreement. Machinists argues that these sections of the agreement demonstrate that the parties intended that all work on those machines not specifically excluded (i.e., the infeed and discharge conveyors to the palletizers) should be assigned to Machinists-represented employees.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that there is no agreed-upon method for the voluntary settlement of the dispute.[3] The parties have stipulated, and we find, that on or about February 4, 1981, the Machinists made a threat to the Employer that it would engage in a strike in furtherance of its claim that the work in dispute should be assigned to employees represented by the Machinists. Accordingly, we find that jurisdictional disputes exist in this case and that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated.

Furthermore, the parties stipulated, and we find, that there exists no agreed-upon method for the voluntary settlement of the dispute. Accordingly, we find that this dispute is properly before the Board for determination under Section 10(k) of the Act.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors. The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[4]

The following factors are relevant in making the determination of the disputes before us:

1. Agreements

Initially, we have considered the collective-bargaining agreements between the Employer and Carpenters and between the Employer and Machinists outside the context of the 1960 jurisdictional agreement. The agreement between the Employer and Machinists states the Machinists shall represent employees who perform, *inter alia*, "machine tool turning, boring, fitting, planing, shaping, babbitting, chipping, sawing, welding, cutting, mechanical repairing, and the making, assembling, erecting, dismantling, and repairing of all machinery of all descriptions and parts thereof." The agreement between the Employer and Carpenters merely states that "[w]ork which is or has been exclusively performed by members of [Carpenters] will not be assigned to employees of any other bargaining unit of the Employer." While the above-quoted provisions provide some references to jurisdiction, neither agreement is sufficiently specific to be useful in resolving the instant disputes. We find this factor favors neither group of employees.

In addition, for each of the assignments in dispute herein, we have considered the 1960 jurisdictional agreement and the awards made since that agreement became effective on October 3, 1960. With regard to the woven chain belt conveyor drives (Case 30-CD-93-1), we find, in agreement with the Employer, that the 1960 jurisdictional agreement supports award of this work to employees represented by Machinists, and with regard to the palletizer conveyors (Case 30-CD-93-2) and the packer conveyors, including the compression unit (Case 30-CD-93-3), we find, also in agreement with the Employer, that the 1960 agreement supports award of this work to employees represented by Carpenters. We note that the Employer has consistently interpreted the 1960 agreement as compelling jurisdiction over a specific component within a machine to the union assigned that component by the 1960 agreement, even if another union has been given jurisdiction over entire machines or class of machine. Thus, while Item 70 grants employees represented by Carpenters jurisdiction over can dump tables, including the wire mesh tables discussed in Case 30-CD-93-1, Item 71 grants employees represented by Machinists jurisdiction over drives within the can dump tables—the specific component involved in this proceeding. Similarly, while the 1960 agreement grants Machinists-represented employees jurisdiction over the general categories of palletizers and packers (Items 64 and 59, respectively), Carpenters-represented employees are assigned the work of installing, maintaining, and adjusting conveyors—a specific component within the general categories of palletizers and packers. Finally, Item 63 awards work on compression units to employees represented by Carpenters, further supporting award of the work

[3] *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

[4] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

in dispute in Case 30-CD-93-3 to those employees.[5]

2. The Employer's past assignments

The Employer has assigned the disputed work in each of the disputes considered herein to employees represented by Carpenters. As noted above, work on the wire mesh woven chain belt conveyor drives has uniformly been assigned to Carpenters-represented employees since November 4, 1971, and this assignment has continued to the present notwithstanding the Employer's revised jurisdictional memorandum of December 6, 1971. The Employer has assigned work on palletizer conveyors exclusively to Carpenters-represented employees since 1958. As for work on packer conveyors and packer compression units, the record does not reveal the length of time that the Employer has followed its present assignment. Accordingly, we find that this factor favors an award of the work in dispute to employees represented by Carpenters.

3. The Employer's preference

The Employer stated that it perfers that assignment of the work in dispute be made in accordance with its interpretation of the 1960 jurisdictional agreement. Therefore, the Employer prefers that the work in dispute in Case 30-CD-93-1 be assigned to employees represented by Machinists, and that the work in dispute in Cases 30-CD-93-2 and 30-CD-93-3 be assigned to employees represented by Carpenters. Thus, the factor of employer preference favors assignment of the work in dispute to the employees mentioned herein.

4. Employee skills

The record shows that both groups of employees possess the necessary skills to perform the work in dispute and both groups could perform it with equal efficiency. Accordingly, this factor does not aid us in determining these disputes.

5. Economy and efficiency of operations

The record contains no evidence, nor does any party contend, that assignment of the disputed work to employees represented by either Union in Case 30-CD-93-1 or 30-CD-93-2 would have any effect on the economy or efficiency of the Employer's operation. As for Case 30-CD-93-3, Machinists contends that the Employer's efficiency would be adversely affected by assigning the work of installing, maintaining, and adjusting conveyors and compression units within the packers to Carpenters-represented employees, since such assignment would require that Machinists-represented employees dismantle the packer and then stand by while Carpenters-represented employees effect the repairs. We note, however, that, in reviewing the parties' application of the 1960 agreement, the Board has accorded little weight to a party's claim that assignment of work to a group of employees would be inefficient because it splits the craft jurisdiction.[6] In any event, it is not evident from the record that an assignment of the work in dispute to one group of employees rather than the other would be more economical or efficient. Therefore, we find that this factor favors neither group of employees.

6. Industry and employer practice

With regard to woven chain belt conveyor drives, Machinists business representative, Thomas N. Lesch, testified that both the Miller and Schlitz breweries in the Milwaukee area assign this work to employees represented by Machinists. With regard to palletizer conveyors, Michael Thoms, an employee of the Schlitz Brewing Company and a member of Machinists, testified that at the Schlitz brewery this work is assigned to employees represented by Machinists. However, Machinists Respresentative Lesch agreed, and the Board has found,[7] that all three breweries are unique in their policies as to jurisdictional assignments. Consequently, we find this evidence insufficient to establish a practice in the industry. Therefore, this factor favors neither group of employees.

In addition, Carpenters introduced relevant portions of the Peoria Pabst Craft Maintenance Assignment manual, which purports to reflect work assignment at the Employer's Peoria, Illinois, facility. Machinists argues that this document demonstrates that at that plant the union assigned a particular machine performs all work on that machine, unless exceptions are specifically spelled out, and that this evidence supports assignment of the disputed work in Cases 30-CD-93-2 and 30-CD-93-3 to employees represented by it. However, absent other evidence to support Machinists assertion, we do not believe that the Peoria agreement estab-

[5] Contrary to our dissenting colleague, we believe that the 1960 agreement can be accorded significant weight in determining assignment of the disputed work in Case 30-CD-93-1. In contradistinction to the case he cites, we find that the agreement clearly covers the work in dispute, and that the agreement makes it abundantly clear that the parties expected this work to be performed by Machinists-represented employees. Moreover, we note that no party contends, and the record contains no evidence, that assignment of this work to Machinists-represented employees will result in job loss to employees represented by Carpenters; in fact, the work in dispute totals less than 10 hours per year. Accordingly, we believe that we can look to the 1960 agreement to aid us in determining this dispute. See *District No. 10 of the International Association of Machinists*, 242 NLRB at 320.

[6] See *Carpenters District Council*, 255 NLRB 413.

[7] *Id.*

lishes an employer practice favoring assignment of that work to Machinists-represented employees.

Conclusion

Having considered all pertinent factors present herein, we conclude that the following employees are entitled to perform the work in dispute: (1) *Case 30-CD-93-1*: employees represented by Machinists are entitled to perform the installation, adjustment, and maintenance of woven chain belt conveyor drives; (2) *Case 30-CD-93-2*: employees represented by Carpenters are entitled to perform the installation, adjustment, and maintenance of palletizer conveyors that are an integral part of palletizers; and (3) *Case 30-CD-93-3*: employees represented by Carpenters are entitled to perform the installation, adjustment, and maintenance of the packer conveyor system including the compression unit. In making these determinations, we are awarding the work in question to employees represented by their respective Unions, but not to those Unions or their members. Our present determinations are limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTES

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Disputes:

1. Employees employed by Pabst Brewing Company who are represented by District No. 10 of the International Association of Machinists and Aerospace Workers, AFL-CIO, are entitled to perform the work of installation, adjustment, and maintenance of woven chain belt conveyor drives at the Employer's Milwaukee, Wisconsin, operation.

2. Employees employed by Pabst Brewing Company who are represented by Carpenters District Council of Milwaukee County and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, are entitled to perform the work of installation, adjustment, and maintenance of palletizer conveyors (the conveyor system that is an integral part of palletizers) at the Employer's Milwaukee, Wisconsin, operation.

3. Employees employed by Pabst Brewing Company who are represented by Carpenters District Council of Milwaukee County and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, are entitled to perform the work of installation, adjustment, and maintenance of the packer conveyance system including the compression unit at the Employer's Milwaukee, Wisconsin, operation.

4. District No. 10 of the International Association of Machinists and Aerospace Workers, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Pabst Brewing Company to assign the work set forth in paragraphs 2 and 3, *supra*, to employees represented by that labor organization.

5. Within 10 days of the date of this Decision and Determination of Disputes, District No. 10 of the International Association of Machinists and Aerospace Workers, AFL-CIO, shall notify the Regional Director for Region 30, in writing, whether or not it will refrain from forcing or requiring Pabst Brewing Company, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the work in dispute to employees represented by District No. 10 of the International Association of Machinists and Aerospace Workers, AFL-CIO, rather than employees represented by Carpenters District Council of Milwaukee County and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO.

MEMBER JENKINS, dissenting in part:

I cannot agree with my colleagues' award in Case 30-CD-93-1. The record in that matter clearly establishes that the employees represented by Carpenters have been performing the disputed work since 1971. Under these circumstances, I find, contrary to my colleagues, that the 1960 jurisdictional agreement cannot be accorded any significant weight in determining which group of employees should be awarded the disputed work. See *Carpenters District Council of Milwaukee County and Vicinity of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO*, 247 NLRB 1393 (1980). Accordingly, the issue herein is whether the Employer's current preference is sufficient to outweigh the 10-year practice of the employees represented by Carpenters performing the disputed work. The Employer's preference for the last 10 years has been to have carpenters do the work; a new-found, unexplained, and perhaps fleeting preference for returning to a 21-year-old and hitherto disregarded jurisdictional agreement can hardly outweigh the overwhelming fact of 10 years' assignment of the work to employees represented by Carpenters. Inasmuch as the Employer's perference is to follow the 1960 jurisdictional agreement which I have heretofore found to be without significant weight, I would award the disputed work in Case 30-CD-93-1 to the employees represented by Carpenters based on their 10-year practice of performing the same.